United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLEES

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED FEB 24 1956

Joseph W. Stewart
CLERK

No. 12,811

PHILLIP W. AUSTIN, Appellant,

v.

MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA,
AND THE JUDGES THEREOF,
LEONARD P. WALSH, CHIEF JUDGE, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VERNON E. WEST,
Corporation Counsel, D. C.,
CHESTER H. GRAY,
Principal Assistant Corporation
Counsel, D. C.,
MILTON D. KORMAN,
Assistant Corporation Counsel,
D. C.,
RICHARD W, BARTON,
Assistant Corporation Counsel,
D. C.,
Attorneys for Appellees,
District Building,
Washington 4, D. C.

STATEMENT OF QUESTIONS PRESENTED

In the opinion of Appellees the questions presented are:

1. Does not the Municipal Court for the District of Columbia, possessing, as it does, the power and authority to censure, suspend, or expel an attorney from practice before its bar, have the concomitant power and authority to establish a bar by providing by rule of court that before an individual may practice before it as an attorney he shall (1) take and subscribe to an oath that he is a member in good standing of the United States District Court for the District of Columbia, that he has not been suspended or disbarred by any court, that he will demean himself as an attorney and counsellor of the Municipal Court uprightly and according to law, and that he will support the rules of the Municipal Court, the laws of the District of Columbia, and the Constitution of the United States, and (2) sign the Roll of Attorneys of the Municipal Court and pay the sum of fifty cents to the clerk of the court?

2. Since appellant clearly has a complete and adequate remedy at law by way of appeal to the Municipal Court of Appeals, was he not without standing to maintain an action in the United States District Court for the District of Columbia to enjoin the Municipal Court for the District of Columbia and the judges thereof from enforcing its order prohibiting him, because of

non-compliance with the provisions of its Rule 75 governing the admission of attorneys to its bar, from practicing as an attorney before that court?

INDEX

SUBJECT INDEX

	Page
Counter-Statement of the Case.....	1
Summary of Argument.....	2
Argument.....	3
The Municipal Court has full power and authority to promulgate its Rule 75 and appellant is required to comply with its provisions before he can practice before that court as an attorney..	3
Appellant cannot maintain an action for injunction since he has available a complete and adequate remedy at law...	18
Conclusion.....	19

CASES CITED

Bradley v. Fisher (1872), 13 Wall (80 U.S.)335	7
Brooks v. Laws (1953), 92 U.S. App. D. C. 367 208 F. 2d 18.....	7,9
Goldsmith v. Board of Tax Appeals (1926), 270 U.S. 117.....	9
Herman v. Acheson (1952), 108 F. Supp. 723...	9
Herman v. Dulles (1953), 92 U.S. App. D.C. 303, 205 F. 2d 715.....	9
Klepinger v. Rhodes (1944), 78 U.S. App. D.C. 340, 140 F. 2d 697, cert. den. 322 U.S. 734.....	10
Mullen v. Canfield (1939), 70 App. D.C. 168, 105 F. 2d 47.....	9,11
Kelly v. U.S. 65 A.2d 593	
In re Chapetz 68 A 2d 228	

Olmstead, In re (1928), 292 Pa. 96, 140 A. 634 16

Paley v. Soloman (1945), 59 F. Supp. 887... 10

Rowe v. Nolan Finance Co. (1944), 79 U. S. App. D. C. 35, 142 F. 2d 93..... 10

Shulman v. Shulman (1952), 86 A. 2d 527..... 10

Summers, In re (1949), 325 U. S. 561..... 18

Wilson, et al, In re (1909), 100 Pac. 75.... 12

Wilson v. Shaw (1907), 204 U. S. 24..... 18

ACTS OF CONGRESS CITED

Act of March 3, 1863, 12 Stat. 762, ch. 91, as amended..... 6, 7

Act of April 1, 1942, 56 Stat. 190, ch. 207.. 3, 10, 11, 18

DISTRICT OF COLUMBIA CODE, 1951, CITED

Sections 11-751, through 11-777..... 3

Section 11-756..... 3

Section 11-772..... 18

Section 11-775..... 11

Section 11-1301..... 6

MISCELLANEOUS CITATIONS

American Jurisprudence, Vol. 28, Injunctions, § 37 et seq..... 18

Corpus Juris Secundum, Vol. 7, Attorney and Client, § 12..... 14

Corpus Juris Secundum, Vol. 17,
Attorney and Client, § 18 (b)..... 12

Journal of the Bar Association
of the District of Columbia, Vol. X, No. 11,
November 1943, p. 495, and Vol XVI, No. 11,
November 1949, p. 498..... 15

Maryland Code, Section 7, Article 10..... 15

Rules of the Municipal Court for
the District of Columbia, Rule 75..... 1, 2, 3, 4, 5, 6, 12

Rules of the United States Court of
Appeals for the District of Columbia
Circuit, General Rule 7..... 9

Senate Bill No. S. 158, 82nd Congress,
1st Session..... 7

Senate Bill No. S. 4014, 81st Congress,
2nd Session..... 7

Washington Post and Times-Herald
Newspaper, February 15, 1956..... 11

IN THE
UNITED STATES COURT OF APPEALS
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No. 12, 811

PHILLIP W. AUSTIN, Appellant,

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MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA,
AND THE JUDGES THEREOF,
LEONARD P. WALSH, CHIEF JUDGE, ET AL.,

Appellees.

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

On May 5, 1955, appellant, a member of the bar of the United States District Court for the District of Columbia, appeared before the Municipal Court for the District of Columbia purporting to represent as counsel a party to a suit on trial before that court. The court called appellant's attention to the fact that he had not complied with the provisions of Municipal Court Rule 75, effective January 2, 1952, regarding the admission of attorneys to its bar and stated it would give him an opportunity to comply with the rule before proceeding further in the cause on trial. When appellant stated in open court that he refused to comply with the provisions of the rule, the court, by order, prohibited and enjoined appellant

from participating in or prosecuting any action in a representative capacity in the Municipal Court until he complied with the provisions of its Rule 75 (App. 5).

On May 12, 1955, appellant filed in the United States District Court for the District of Columbia an amended complaint seeking to enjoin the Municipal Court and the judges thereof from enforcing its order of May 5, 1955 (App. 2).

After argument on a motion of appellees (App. 8), the United States District Court, by order dated June 2, 1955 (App. 9), dismissed appellant's complaint.

SUMMARY OF THE ARGUMENT

The Municipal Court has, both by virtue of specific authority given it by its creative statute and under the inherent authority which it possesses as a court of general jurisdiction, power and authority to promulgate its Rule 75 respecting the admission of attorneys to practice before it. Appellant's complaint in the United States District Court seeking to enjoin the Municipal Court and the judges thereof from enforcing its Rule 75 as respects appellant was therefore properly dismissed. In any event, since appellant had a complete and adequate remedy at law by way of appeal to the Municipal Court of Appeals and did not allege or show irreparable injury, he could not evoke the equitable jurisdiction of the United States District Court.

ARGUMENT

I

The Municipal Court has full power and authority to promulgate its Rule 75 and appellant is required to comply with its provisions before he can practice before that court as an attorney.

The Congress of the United States by the Act of April 1, 1942[1], consolidated The Police Court of the District of Columbia and the Municipal Court of the District of Columbia and created a single court to be known as The Municipal Court for the District of Columbia.

Section 5 (b) of this Act[2] provides, in part:

> "The Municipal Court for the District of Columbia shall have the power and is hereby directed to prescribe, by rules, the forms of process, writs, pleadings and motions, and practice and procedure in such court, to provide for the efficient administration of justice,***."

Pursuant to this authority, and its own inherent power, the Municipal Court promulgated Rule 75 which reads, in part:

> "(a) The bar of this court shall consist of any person who is a member of the bar of the United States District Court for the District of Columbia in good standing, unless disbarred or suspended by action of this court, provided such person shall:
>
> (1) Take and subscribe to the following oath or affirmation, viz:

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[1] 56 Stat. 190, ch. 207, D. C. Code, 1951, §§ 11-751 through 11-777.

[2] D. C. Code, 1951, § 11-756.

> 'I, _____ do solemnly swear (or affirm) that I am a member in good standing of the United States District Court for the District of Columbia, having been duly admitted on the _____ day of _____, 19____; that I have not been suspended or disbarred by any court; that I will demean myself as an attorney and counsellor of this Court uprightly and according to law; and that I will support the Rules of this Court, the laws of the District of Columbia, and the Constitution of the United States.'
>
> (2) Upon subscribing thereto on a card to be furnished by the clerk of this court, sign the Roll of Attorneys of this court and pay the sum of fifty cents ($. 50) to the clerk of this court.
>
> This provision shall become effective on the 2nd day of January, 1952, and shall be complied with by all persons whether or not a member of the bar of this court at any time prior to that date.
>
> (b) No person, other than such member duly qualified and admitted to practice as provided in paragraph (a), shall, without special permission of the judge presiding over the case in which such person is to appear, and then for purposes of the trial of that case only, participate in or prosecute any action in a representative capacity in this court." (App. 7)

Appellant, without having complied with the above quoted provisions of Rule 75, attempted to act in a representative capacity as counsel for a party to a case on trial before the Municipal Court. After giving appellant a fair opportunity to comply with the provisions of its Rule 75, and after appellant had stated in open court that he refused to comply with said provisions, the Municipal Court, by order dated May 5, 1955, prohibited and enjoined appellant from participating in or prosecuting any action in a representative capacity in that court

unless and until he complied with said provisions, but provided that said order should be stayed as long as appeal from its operation and effect was diligently prosecuted (App. 5).

Thereafter, on May 12, 1955, appellant filed an amended complaint in the United States District Court for the District of Columbia seeking to enjoin the Municipal Court and the judges thereof from enforcing its order prohibiting him, because of non-compliance with the provisions of its Rule 75, from practicing before it. (App. 2)

Appellees moved to dismiss the complaint on the ground that it stated no claim upon which relief could be granted (App. 8). By order dated June 2, 1955, the District Court granted appellees' motion and dismissed the complaint (App. 9). From the dismissal of his complaint appellant appeals to this Court.

At the outset, the nature of the order of the Municipal Court (App. 5) of which appellant complains should be clearly delineated and understood. The order was manifestly not one of disbarment or debarment, as appellant contends, since by its own terms appellant could annul the order merely by complying with the provisions of Municipal Court Rule 75. Rather the order recognized that appellant had not complied with the procedural rule necessary for practice before the Municipal Court and prohibited and enjoined

him from participating in or prosecuting any action in a representative capacity in that court until he complied with the provisions of the rule. Appellant's contention, therefore, that the procedural steps necessary for disbarment or debarment were not complied with is without meaning.

Appellant does not contend that he has complied with the provisions of Rule 75. Indeed, he acknowledges that he has specifically refused to do so. His position is that, because he is a member of the bar of the United States District Court for the District of Columbia, he is entitled to practice as an attorney before the Municipal Court, notwithstanding his refusal to comply with the provisions of its Rule 75.

The Congress has provided that:

> "The United States District Court for the District of Columbia in general term shall have full power and authority from time to time to make such rules as it may deem proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension and expulsion; and every person so admitted, before he shall be at liberty to practice therein, shall take and subscribe the following oath:
>
> > " 'I, _____, do solemnly swear (or affirm) that I will demean myself as a member of the bar of this court uprightly and according to law; and that I will support the Constitution of the United States.' " [3]
> > [Emphasis supplied]

[3] Act of March 3, 1863, 12 Stat. 762, ch. 91, as amended, D. C. Code, 1951, § 11-1301.

It is to be noted that this Act gives the United States District Court the power and authority to pass upon the qualifications and admission of persons to membership in its bar and to practice therein, i. e. before the District Court. It does not purport to give the right to practice before all courts and quasi-judicial bodies in the District of Columbia.[4]

Several bills have been introduced in Congress in recent years to provide that this court, as the highest court in the jurisdiction, and not the United States District Court, shall make such rules as it may deem proper with respect to the examination, qualification and admission of persons to membership in its bar. Two of these bills[5] contained the specific provision:

> "Membership in the bar of the United States Court of Appeals for the District of Columbia Circuit shall entitle the member to practice in all the courts of the District of Columbia."

None of these bills was enacted into law. The Act of March 3, 1863, as amended, supra, respecting membership in the bar of the United States District Court contains no such provision.

Appellant quotes from Brooks v. Laws :"***Congress*** has not, as have the legislatures of many states, placed in the

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[4] See Bradley v. Fisher, 13 Wall. (80 U. S.) 335.

[5] S. 158, 82nd Congress, 1st Session; and S. 4014, 81st Congress, 2d Session

appellate court the initial responsibility for admission to the bar of the jurisdiction. It placed that responsibility on the District Court, ***".[6] Appellant interprets this an an expression by this Court that the admission of an attorney to the bar of the United States District Court automatically entitles him to practice before all courts and quasi-judicial bodies in the jurisdiction. Obviously, this Court meant no such thing.

Many practicing attorneys seldom, if ever, appear before a court. A large proportion of the practice of every attorney is carried on elsewhere than before the courts. Comparatively few attorneys spend a majority of their time in court, and even those who do perform many services for clients in the office. Admission to the bar of the United States District Court entitles an attorney to appear before that court and to engage in the general practice of law in this jurisdiction. It does not entitle him to appear before all courts of the jurisdiction without complying with their rules regarding the admission of attorneys to practice before them. The very use of the word "initial" in the quotation clearly contemplates that other courts may impose additional requirements for practice before them.

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[6] (1953) 92 U. S. App. D. C. 367, 371, 208 F. 2d 18. Emphasis supplied. Appellant emphasises "admission to the bar of the jurisdiction."

Indeed, Rule 7 of the general rules of this Court imposes additional requirements on attorneys seeking admission to practice before it. Although it accepts the decision of the United States District Court as to the applicant's learning in the law, it requires additional evidence that his private and professional characters are good, requires him to pay a fee of $10.00, and requires him to take and subscribe on oath that he will demean himself as an attorney and counsellor of this Court uprightly and according to law. It further requires that admission must be upon motion in open court by a member of the bar of this Court. Moreover, an attorney may be qualified to practice before this Court without being qualified to practice before the United States District Court.[7]

It has also been held that a quasi-judicial board or commission may, under a general grant of power and without specific authority, prescribe rules for the admission of attorneys to appear before it, and prescribe reasonable requirements as to attorneys authorized to practice before it.[8]

In Mullen v. Canfield,[9] this Court held that the old Police Court

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[7] Brooks v. Laws (1953), 92 U. S. App. D. C. 367, 371, 208 F. 2d 18

[8] Goldsmith v. Board of Tax Appeals, (1926), 270 U.S. 117; Herman v. Acheson, (1952), 108 F. Supp. 723, aff. Herman v. Dulles (1953), 92 U.S. App. D. C. 303, 205 F. 2d 715.

[9] (1939) 70 App. D. C. 168, 105 F. 2d 47.

of the District of Columbia, absent specific statutory authority, had no power to admit an attorney to practice before it or to disbar an attorney from practicing before it. The decision was based on the fact that the Police Court was a court of "inferior and limited jurisdiction." This Court made it clear, however, that its decision would have been otherwise had the Police Court been a court of general jurisdiction. The jurisdiction of the Municipal Court as it has existed since the Act of April 1, 1942, supra, is quite different from that of the old Police and Municipal Courts.[10] The present Municipal Court is, to all intents and purposes, and was intended by its creative statute to be, a court of general jurisdiction.

Although the Congress has placed certain limitations on the jurisdiction of the Municipal Court, within these limits, it has full criminal, civil and equitable jurisdiction.[11] The fact that the possible penalty that can be imposed in criminal cases, or the amount in controversy in civil cases, is less than that of the United States District Court does not change the general nature of the jurisdiction of the Municipal Court. As Chief Judge Cayton of the

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[10] Paley v. Soloman, (1945), 59 F. Supp. 887

[11] Rowe v. Nolan Finance Co. (1944), 79 U. S. App. D. C. 35, 142 F. 2d 93; Klepinger v. Rhodes (1944), 78 U. S. App. D. C. 340, 140 F. 2d 697, cert. den. 322 U. S. 734; Paley v. Soloman (1945), 59 F. Supp. 887; Shulman v. Shulman (1952), 86 A. 2d 527.

Municipal Court of Appeals recently said, in referring to the Municipal Court: "A large jurisdictional dollar sign is not the determining factor in the importance of a court."[12]

Section 10 of the Act of April 1, 1942, supra, creating the present Municipal Court provides:

> "The Municipal Court for the District of Columbia and the Municipal Court of Appeals for the District of Columbia * * *shall have full power and authority to censure, suspend, or expel from practice, at their respective bars, any attorney for any crime involving moral turpitude or professional misconduct, or any conduct prejudicial to the administration of justice * * *."[13]

Undoubtedly, this provision was placed in the statute to make it unmistakably clear that the Municipal Court was to be a court of general jurisdiction, for, as this Court pointed out in Mullen v. Canfield, supra, the power to admit to practice and to disbar from practice is a power ordinarily possessed only by courts of general or superior jurisdiction.

Appellant points out that although the Municipal Court of Appeals and the Municipal Court were given identical powers to censure, suspend, or expel an attorney from their respective bars, the Municipal Court of Appeals has not seen fit to adopt a

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[12] Washington Post and Times-Herald Newspaper, February 15, 1956

[13] D. C. Code, 1951, § 11-775

rule comparable to Municipal Court Rule 75. There is, of course, not the same need for such a rule in the Municipal Court of Appeals as there is in the Municipal Court. The number of cases heard by the Municipal Court of Appeals is naturally only a small fraction of those heard by the Municipal Court. Moreover, the very nature of appellate practice allows the clerk of the Municipal Court of Appeals ample time within which to check with the clerk of the United States District Court to determine the right of any attorney unknown to him to practice before that court. This is neither practicable, nor in many instances possible, in a trial court handling the volume of cases that the Municipal Court does.

Manifestly, if a court has the power to disbar attorneys from practice before it, it likewise has the power to create a bar of its own and admit attorneys to practice.[14] An attorney cannot be disbarred from practice until he has first been admitted to practice.

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[14] "It is well settled that any court authorized to admit an attorney has inherent jurisdiction to suspend or disbar him for sufficient cause and such jurisdiction does not necessarily depend on any express constitutional provision or statutory enactment and conversely a court that has no jurisdiction to admit attorneys to practice has no jurisdiction to disbar them, the jurisdiction to admit and disbar being deemed correlative." 7 C. J. S., Attorney and Client, § 18 (b). And see In re Wilson, et al., 100 Pac. 75, 76.

Although it is true that for a considerable period of time after its creation the present Municipal Court allowed members of the bar of the United States District Court to practice before it without being formally admitted to its bar, this forebearance was in no way determinative of the court's power and authority to impose reasonable requirements for admission to practice before it.

Admittedly, any requirements imposed by the Municipal Court to practice before it must be reasonable. All that an attorney is required to do to practice before the Municipal Court is to sign the roll of attorneys, pay a fee of fifty cents, and take and subscribe to an oath that he is a member in good standing of the United States District Court, has not been suspended or disbarred by any court, will demean himself as an attorney and counselor in the Municipal Court uprightly and according to law, and will support the rules of the court, the laws of the District of Columbia and the Constitution of the United States. Surely, these requirements are reasonable and impose no undue burden upon appellant, even if membership in the bar of the United States District Court itself authorizes him to practice before the Municipal Court. The Municipal Court leaves to the United States District Court the determination of whether or not appellant is

qualified by training, experience and character and imposes no additional requirements in this respect. Without a roll of attorneys, the Municipal Court has no way of knowing which attorneys are qualified to practice before it by reason of their admission to the bar of the United States District Court. Municipal Court Judges cannot be expected to personally know every member of the bar of the United States District Court or be required to communicate with the clerk of that court to ascertain the right to practice of each person who appears before them and states that he is a lawyer.

The requirement that an attorney seeking admission to practice before the Municipal Court take the oath prescribed imposes upon him no obligation which he does not already owe to that court. The taking of the oath is simply declaratory of that obligation.[15]

In May 1943 the Maryland legislature enacted a special law providing, in part:

> "The Circuit Court for Montgomery County is hereby authorized and empowered to make rules of court relating to practice before said court and relating to admission of attorneys to practice before said court, and the Circuit Court is authorized and empowered to license attorneys to practice before the Circuit Court for Montgomery County* * *."

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[15] 7 C. J. S., Attorney and Client, § 12

Pursuant to this authority the Circuit Court for Montgomery County provided, by rule, that no attorney could practice before it unless such attorney maintained an office within the county and spent a reasonable part of each working day at his office.

At this time Section 7, Article 10, of the Maryland Code provided, in part:

> "All persons who are now or shall hereafter be admitted to practice law in the court of appeals of this State, shall be entitled to practice law in any or all other courts of the State, * * *."

A group of attorneys who were effected by the Montgomery rule sought an audience with the court to protest both the validity of and the necessity for the rule. The court granted a full hearing at which the invalidity of the rule was forcefully urged upon it. In a carefully worded decision, however, the court rejected all suggestions of invalidity. The rule remained in effect until 1947, when, because of a change in the rules of the Maryland Court of Appeals, it was rescinded as no longer necessary.[16]

In a case strikingly similar to the one at bar, the Supreme

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[16] See articles in the Journal of the Bar Association of the District of Columbia, Vol. X, No. 11, November 1943, p. 495, and Vol. XVI, No. 11, November 1949, p. 498.

Court of Pennsylvania sustained the right of an inferior tribunal to make reasonable rules for practice before it. Thus in In re Olmstead,[17] that court, in affirming an order discharging a rule to show cause why an attorney should not be enrolled as a member of the Delaware County bar, said:

> "* * *a member of the Philadelphia bar and a resident of Delaware County, desiring to become enrolled as a member of the Delaware county bar, applied to the board of law examiners of that county for a certificate of approval. The board after expressing itself as satisfied with the applicant's general qualifications, refused the certificate on the sole ground that he had not stated an intention to open and maintain his principle office in Delaware county as required by the rules of the court of common pleas of that district. * * *
>
> * * * * * * * * * * * *
>
> "The court rule here involved* * *provides that an applicant for admission to the bar of Delaware county shall make a 'final declaration in writing that he intends permanently to practice in that county, and within three months open his principal office there* * *'
>
> * * * * * * * * * * * *
>
> "* * *The validity of this rule of court is the real question before us for decision* * *.
>
> * * * * * * * * * * * *

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[17] (1928) 292 Pa. 96, 140 A. 634

"Is the rule of the court below under which appellant was refused admission as a regularly enrolled member of the bar of that tribunal, a valid regulation which he had to meet, or was he legally entitled to be so enrolled notwithstanding his non-compliance with that rule?

"The court below [in] * * * its opinion states:

'It cannot be held that the local examining board is to review the action of the Supreme Court in determining the qualifications of the appellant for admission to that court, nor to suggest that while he may be * * * qualified to practice before that tribunal, he has not sufficient knowledge of the law to practice in [a lower] court. The mere statement of any such proposition is sufficient, we think, to show its absurdity. * * *The certificate from the Supreme Court establishing that the applicant is* * * learned in the law, * * * as we understand it, prevents the other courts from examining as to his qualifications in this one respect. In all other respects, however, it is for the [lower] courts alone to determine what else they will require from the appellant before admitting him to practice as a member of the bar of such courts.'

"These views are not at variance with the existing system controlling admissions to the bar of Pennsylvania * * *.

"The order appealed from is affirmed."

II

Appellant cannot maintain an action for injunction since he has available a complete and adequate remedy at law.

Injunction is distinctly an equitable remedy.[13] No proposition of law is better established than that an injunction will never issue where there exists a complete and adequate remedy at law.[14] If appellant was aggrieved by the order of the Municipal Court, he clearly had a right to appeal to the Municipal Court of Appeals. The Act creating that court specifically provides:

> "Any party aggrieved by any final order or judgment of the Municipal Court for the District of Columbia, * * * may appeal therefrom as of right to the Municipal Court of Appeals for the District of Columbia."[15]

That the order in question was an appealable order is equally clear.[16] Plainly, then, appellant has a complete and adequate remedy at law by way of appeal to the Municipal Court of Appeals. This being so, he could not evoke the equitable jurisdiction of the United States District Court.

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[13] Wilson v. Shaw (1907), 204 U. S. 24
[14] 28 Am. Jr., Injunctions, § 37, et seq.
[15] 56 Stat. 195, ch. 207, § 7 (a), D. C. Code, 1951, § 11-772
[16] In re Summers, (1949), 325 U. S. 561.

Moreover, before appellant can obtain equitable relief by way of injunction he must allege and prove irreparable injury. This he did not even attempt to do, and clearly he could not have done so. The order of the Municipal Court plainly states that it should be automatically stayed for a period of thirty days upon the noting of an appeal from its operation and effect and, upon application, further stayed from time to time so long as appellant diligently prosecuted his appeal.

CONCLUSION

It is respectfully submitted that the action of the United States District Court in dismissing appellant's amended complaint was in accordance with law and should be affirmed.

VERNON E. WEST,
Corporation Counsel, D. C.
CHESTER H. GRAY,
Principal Assistant
Corporation Counsel, D. C.
MILTON D. KORMAN,
Assistant Corporation
Counsel, D. C.
RICHARD W. BARTON,
Assistant Corporation
Counsel, D. C.,
Attorneys for Appellees,
District Building
Washington 4, D. C.

United States Court of Appeals
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REPLY BRIEF FOR APPELLANT

IN THE

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For the District of Columbia Circuit

No. 12811

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THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA,
AND THE JUDGES THEREOF.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Phillip W. Austin, P.P.
503 Columbian Building,
Washington (1) D. C.

HENRY J. BALZER
Of Counsel

AS TO APPELLEES' STATEMENT OF QUESTIONS PRESENTED

No. 1 of the Appellees' brief presents an inaccurate interpretation of Rule 75 in that it says:

> "that before an individual may practice before it (Municipal Court) as an attorney he shall (etc.)"

Rule 75 says, inter alia,

> "This provision shall become effective on the 2nd day of January, 1952 and shall be complied with by all persons whether or not a member of the bar of this Court at any time prior to this date."

It can at once be seen that if the question as stated in the brief were correct, it could not possibly effect the Appellant or any other members of the bar of the Municipal Court who were such at the time or prior to the adoption of the rule and that the rule could not have been employed to justify the debarment of Appellant, who was well-known to have practiced lawfully in that Court long prior to January 2, 1952, by the very Judge who issued the order of debarment, having been on opposite sides in matters in that Court before that date, when the particular Judge was an Assistant Corporation Counsel.

As the rule itself shows it is directed to all members of its bar whether or not so prior to January 2, 1952, a decidely different proposition.

Suffice it to say that as to Appellees' Question 1, it will be found that, from every approach to the subject, from a study of every phase thereof, the law is that the Municipal Court does not possess any power of discretion whatsoever to admit or reject from practice in its Court, beyond the ascertainment of the fact that an applicant is or is not a person admitted to practice by the United States District Court for the District of Columbia in good standing.

Respecting Question 2, which we believe to be readily determinable, we shall direct ourselves to first, and it will be seen that no recourse remained to Appellant other than that undertaken, and that there does not exist a complete and adequate remedy at law through appeal to the Municipal Court of Appeals.

I N D E X

	Page
As to Appellees Statement of Questions Presented	Frontispiece
Evaluation of Established and Undisputed Material Up to Point Embracing Appellants Brief and Joint Appendix and Brief of Appellees	Preface
Reply Brief of Appellant	1

TABLE OF CASES

Board of Liquidation v McComb 92 U. S., 531	4
Bradley v Fisher, 13 Wall 133	Evaluation
Brooks v Laws 92 App. D. C. 367, 208 F. 2 18	7
Ex Parte Garland, 4 Wall 333, 18 L ed. 366	Evaluation
Garfield v. U. S. ex rel Goldsby, 211 U. S. 249, 30 App.D.C. 177	4 & Evaluation
State ex rel Jones v Laughin, 73 Mo. 443	6
Mullen v Canfield 70 App. D.C. 168, 105 F. 2d 47	2-6-7-9
In re Summers 325 U.S. 561, 65 S. Ct., 89 L ed. 1795	Evaluation
In re Wilson, et al 100 Pac. 75	6

STATUTES AND RULES

Rule 75 Municipal Court	Frontispiece, Evaluation, 4-5-6-7-8
Rule 62 Municipal Court, Former Rule	7
Rule IV Municipal Court of Appeals	3-7
Rule 94 U. S. District Court	8
31 Stat. L. Act March 3, 1901	5-7
41 Stat. L. Act April 19, 1920	5-7
56 Stat. L. Act April 1, 1942	5-7
Sec. 11-756 - (56 Stat. L.) 1951 D. C. Code	2-4-9
Sec. 11-775 - (56 Stat. L.) 1951 D. C. Code	5-6-7-9
Sec. 11-1301, 1302, 1304, 31 Stat. L. (1901)) amended by 41 Stat. L. (1920) 1951 D. C. Code)	7

MISCELLANEOUS TREATISES

C.J.S. Sec. 18 (b)	6

CONSTITUTION REFERENCES

Article 1, Sec. 9, Clause	Evaluation
5th Amendment	Evaluation

EVALUATION
OF
ESTABLISHED AND UNDISPUTED MATERIAL
UP TO THIS POINT
EMBRACING APPELLANTS BRIEF AND JOINT APPENDIX
AND BRIEF OF APPELLEES

The brief of Appellees makes no reply and directs no word to the constitutional questions posed and arguments made by Appellant and it must be assumed therefor that the points made are conceded as correct and hence that the debarment of the Appellant was improper in that:

1. It failed to accord Appellant an opportunity to show cause why he should not be debarred for refusal to comply with Rule 75, thereby taking property without due process* in contravention to the Fifth Amendment of the Constitution of the United States, even if it be assumed that Rule 75 is valid.

2. That Rule 75 is invalid and inapplicable to this Appellant and all other members of the bar of the District of Columbia in existence prior to the time of the issuance of the said rule in that it disbarred them by abolishing their previous membership and by requiring them to appear, take oath and pay a fee as a prerequisite to being readmitted, the failure to comply of which resulted in their being debarred and prevented from practicing before and in the Municipal Court in violation of the Fifth Amendment and of Article 1, Clause 3 of the Constitution by taking property without due process and by attainder in that the said rule divested Appellant and all other members of the right to practice their profession duly acquired under the law as it existed when those rights attached, and requiring them, under the pains and penalties of debarment from practice in the Municipal Court to meet new conditions and to pay a new and additional fee thus effectuating an attainder and inflicting punishment by what is in essence the use of ex post facto provisions.

Further the brief of Appellees contains nothing on the subject of the two grounds upon which the Court below dismissed Appellant's complaint, viz:

1. That the Municipal Court could neither sue nor be sued.

2. That the complaint failed to state a cause of action against the remaining defendants (The judges of the Municipal Court).

They make no allusion to Appellant's argument against the propriety of the above named grounds and we must assume therefore that they agree with Appellant and concede the correctness of his position.

* Bradley v. Fisher 13 Wall. (80 U.S.) 335, 354

** Ex Parte Garland, 4 Wall. 333, 347, 366, 367 and 379; 18 L. ed. 366

** Garfield vs. U.S. ex rel Goldsby 211 U.S. 249, 261, 262, 263 and 264

On page 18 it is admitted by Appellees "that the order in question was an appealable order is equally clear" and reference is made to the case of In Re Summers, 325 U. S. 561, which holds that a denial of the right of an attorney to practice is a matter in controversy. This indicates that a cause of action does exist in the instant matter and hence the order of dismissal by the lower court was erroneous.

Appellees argue, however, that the appeal exists only in the Municipal Court of Appeals. We believe this is beside the point, the order dismissing Appellant's case in the District Court resting on two grounds unrelated to the court's jurisdiction, namely:

1. That the Municipal Court is not an entity which could sue or be sued.
2. That the complaint fails to state a claim against the remaining defendants on which relief can be granted.

Nowhere does the trial Court state in the order that the cause was dismissed by reason that there existed a complete and adequate remedy by appeal to the Municipal Court of Appeals and nowhere does the order show that the cause was dismissed for lack of jurisdiction.

The argument of Appellees, contrary to asserting a single justification for the trial court's order of dismissal ~~have~~ has in fact established the merit and propriety of Appellant's action and as well the fact that in the order dismissing Appellant's suit below the District Court erred.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 12,811

PHILLIP W. AUSTIN, Appellant,

v.

MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA,
AND THE JUDGES THEREOF,
LEONARD P. WALSH, CHIEF JUDGE, ET AL.,

Appellees.

REPLY BRIEF OF APPELLANT

ARGUMENT AS TO QUESTION 2 THAT APPELLANT HAS A COMPLETE AND ADEQUATE REMEDY AT LAW BY WAY OF APPEAL TO THE MUNICIPAL COURT OF APPEALS.

We are obliged to disagree that our recourse was by appeal to the Municipal Court of Appeals.

1. The cause on trial, in which Appellant was appearing as counsel and not as a party, being halted and its continuance prevented by mistrial after Appellant's debarment, was not appealable since mistrial accords a new trial, which is all obtainable if it were subject to appeal.

2. There being no matter on file or on hearing in which appellant was a party at the time of the debarment, there was no way open for appeal to the Municipal Court of Appeals.

It was requisite therefor that a complaint be instituted, setting forth the facts of the debarment; facts, which upon trial had to be established by evidence. This meant an original action. Only two courts of original action exist in our judicial structure. The Municipal Court and the District Court. To enjoin the Municipal Court, Appellant certainly could not bring his action in the Municipal Court and there remained only the course taken, viz: a complaint in the District Court. Apart from this, since only the District Court is possessed of the power of admission to practice and since it was by the District Court that Appellant was granted the status of an attorney entitled to practice in this jurisdiction, it was wholly proper to file his action in the District Court.

On pages 2 and 3 of its brief Appellees state that:

> "THE MUNICIPAL COURT HAS, BOTH BY VIRTUE OF SPECIFIC AUTHORITY GIVEN IT BY CREATIVE STATUTE AND UNDER THE INHERENT AUTHORITY WHICH IT POSSESSES AS A COURT OF GENERAL JURISDICTION, POWER AND AUTHORITY TO PROMULGATE ITS RULE 75, RESPECTING THE ADMISSION OF ATTORNEYS TO PRACTICE BEFORE IT." (emphasis supplied)

Where in its creation under an Act of Congress (April 1, 1942) is there any specific language used relative to the admission of attorneys to practice before it (Municipal Court)? An examination of the D. C. Code, 1951 (Sec. 11-756) fails to disclose one single reference to the admission of Attorneys (any attorney) to practice in the Municipal Court.

As a matter of fact Appellees (page 3) in their brief rely upon these specific words:

> "Sec. 5 (b) of this act (1942) provides in part: The Municipal Court for the District of Columbia shall have the power and is hereby directed to prescribe, by rules, THE FORMS OF PROCESS, WRITS, PLEADINGS AND MOTIONS, AND PRACTICE AND PROCEDURE IN SUCH COURT, TO PROVIDE FOR THE EFFICIENT ADMINISTRATION OF JUSTICE, ***." (emphasis supplied)

and omit to quote the following:

> "the same shall conform as nearly as may be practicable to the forms, practice and procedure now obtaining under "THE FEDERAL RULES OF CIVIL PROCEDURE." (emphasis supplied)

they then state on page 3 of their brief:

> "Pursuant to this authority, and its own inherent power, the Municipal Court promulgated Rule 75 which reads, in part: (a) The bar of this court shall consist of any person who is a member of the bar of the United States District Court for the District of Columbia in good standing, unless disbarred or suspended by action of this Court, ***"

How can any one read into the Act that the Municipal Court has the "specific authority" to admit attorneys to practice before it? The Act of Congress gave the Municipal Court the power to prescribe the rules governing the forms of process, writs, pleadings and motions, and what (?) the practice and procedure concerning the forms of process, writs, pleadings and motions.

NOWHERE IN THAT ACT HAVE THEY BEEN GIVEN SPECIFIC OR IMPLIED POWER TO ADMIT ATTORNEYS. (emphasis supplied)

This is admitted by their Rule 75 when they state that the bar of the Municipal Court SHALL CONSIST OF ANY PERSON WHO IS A MEMBER OF THE BAR OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA IN GOOD STANDING. (emphasis supplied). On page 7 of their brief Appellees admit that the United States District Court for the District of Columbia makes rules with respect to the examination, qualification and admission of persons to practice, and it is the only Court having power to examine, qualify and admit persons to practice in the District of Columbia. The power to examine, qualify and admit persons to practice has not been changed by any Act of Congress and until Congress by legislative enactment takes that power away from the United States District Court for the District of Columbia or directly confers it upon another Court, no other court can usurp and claim to have the inherent or specific authority to EXAMINE, QUALIFY AND ADMIT PERSONS TO PRACTICE IN THE DISTRICT OF COLUMBIA. (See Mullen case) 70 App. D.C. 168

As a matter of fact the Municipal Court of Appeals has its Rule IV, and this Court can take judicial notice of Rule IV which states:

> "Only members of the Bar of the District Court of the United States for the District of Columbia in GOOD STANDING SHALL BE ENTITLED TO PRACTICE IN THIS COURT". (emphasis supplied)

No reference is made to the Municipal Court and as a principle of law the Municipal Court of Appeals has, by its Rule IV, passed on the question of what attorneys may practice before the Municipal Court and the Municipal Court of Appeals, otherwise they would have adopted a different rule respecting practice before it.

On page 12 of Appellees brief a most unusual argument is made in justification of Municipal Court's Rule 75, namely:

> "There is, or course, not the same need for such a rule in the Municipal Court of Appeals as there is in the Municipal Court."

and for reason states:

> "The number of cases heard by the Municipal Court of Appeals is NATURALLY ONLY A SMALL FRACTION OF THOSE HEARD BY THE MUNICIPAL COURT. Moreover, the very nature of appellate practice allows a clerk of the Municipal Court of Appeals AMPLE TIME WITHIN WHICH TO CHECK WITH THE CLERK OF THE UNITED STATES DISTRICT COURT TO DETERMINE THE RIGHT OF ANY ATTORNEY UNKNOWN TO HIM TO PRACTICE BEFORE THAT COURT. THIS IS NEITHER PRACTICABLE, NOR IN MANY INSTANCES POSSIBLE, IN A TRIAL COURT HANDLING THE VOLUME OF CASES THAT THE MUNICIPAL COURT DOES." (emphasis supplied)

The above argument of Appellees does small honor to the Municipal Court of Appeals, the personnel of which have created for their Appellate Court universal respect, and when it is considered that Judges Cayton and Hood have been on that bench from its beginning and together with the late Judge Richardson had the responsibility for promulgating every rule under which the Appellate Court would operate, and bearing in mind the great circumspection, scrupulousness and acumen unfailingly present in every decision issued by them, and it cannot be asserted with justice or truth that, on the basis of inexpedience, for that is what the preceding argument suggests, those judges relaxed their concern for complying to the fullest extent with the responsibilities, powers and duties reposed in them when they established Rule IV. To the contrary, not only does experience regarding that Court assure us that the rule was calculated to embrace in full whatever the law applicable accorded, both by statute and judicial construction, but that insofar as the Municipal Court is concerned, it must be conclusively presumed that the Municipal Court of Appeals Rule 4 contains all of the law respecting the matter of admission of attorneys to practice before its own Court and that of the Municipal Court as well.

On page 5 Appellees argue:

> "The order was manifestly not one of disbarment or debarment,*** since by its terms Appellant could annul the order merely by complying with the provisions of Municipal Court Rule 75".

This is, it seems to us, specious and unworthy. It is the old argument of an aggressor who charges that injured victim was author of his own injuries because he resisted.

Appelles must be hard put to advance an argument so devoid of logic or merit, or they must entertain supreme contempt for this Court and Appellant in presenting it. We do not think it necessary to labor the point.

On page 19 of Appellees' brief it is contended that no irreparable injury is shown. This is contrary to the facts, for (1) The "Amended Order" on its face shows there was an original order and on trial it would have been established by evidence that the Court had first issued an oral order, of which Appellant was refused a copy; as Appellees are well aware and should have disclosed same in their brief; that by the original order sua sponte he was disbarred instanter without the provision for a stay pending appeal. This can be seen from the fact that the cause on trial at the time was halted, the jury dismissed and a mistrial declared. Had there at the time existed the slightest intention on the part of the Court to withhold the effect of the debarment and to stay its effect pending appeal, the matter on trial would have been permitted to continue. (2) The summary debarment did therefore inflict immediate and irreparable injury to the Appellant.

See Garfield v Goldsby, 211 U. S. 249, 262, wherein the Court stated:

> "There is no place in our Constitutional system for the exercise of arbitrary power" *** and on page 261 is an extremely pertinent and lucid consideration of an unauthorized exercise of power and quotes Board of Liquidation v McComb, 92 U. S. 531, 541, respecting injury for which no adequate compensation can be had at law, may have injunction to prevent it. This case was in this jurisdiction and in this Court, 30 App. D. C. 177, 185, wherein this Court said "And even if the individual, after enrollment had been approved, had nothing more than a mere expectancy, that represented something of considerable pecuniary value; and the power to destroy that reasonable expectancy, without notice and opportunity to defend it, is so opposed to the genius of our institutions that it ought not to be inferred to exist. Nothing less than plain provision of an imperative law would seem to warrant it".

and (3) the claim that Appellant had failed to comply with a procedural rule necessary for practice is clearly on a false hypothesis, for Rule 75 is not a procedural rule <u>for</u> or <u>of</u> practice, but goes entirely to the right <u>to</u> practice, a matter already established long before by his admission to practice under the law of the jurisdiction. Procedure can only apply to the steps by which a cause moves from filing to judgment and no procedural disability or error in the course of the case on trial was given or shown to have existed with respect to the case on trial in the order of the Municipal Court. The only matter upon which the Court predicated its order was the refusal of Appellant to qualify as an attorney admitted to practice in the Municipal Court under its Rule 75. To urge Sec. 11-756, Rules of Practice and Procedure is to not deal fairly with the

facts in the face of the repeated claims to possess the right to qualify and admit attorneys to practice under Sec. 11-775, and by virtue of being a Court of General Jurisdiction, and the possession of inherent power to qualify and admit. A study of Sec. 11-756 will show the inapplicability of Rule 75 to 11-756, and vice-versa.

ANALYSIS OF STATUTES INVOLVED

Moreover, the failure, under 11-756, to follow procedural steps in any cause before the Municipal Court is fully provided for in the practice before that Court, being subject to attack by appropriate motion, and, if not remedied by prescribed steps, will result in the dismissal of the particular case. Such failure cannot, however, result in the debarment or disbarment of an attorney from practice unless there is present the various elements of improper conduct contained in 11-775. It is evident therefore that Rule 75, could not emanate from 11-756, which should suffice to demonstrate the illegality of Appellant's debarment, and of greater moment and importance, it lays bare the complete impropriety of Rule 75 as a Rule, not of practice and procedure but of admission to practice. It cannot be denied that insofar as 11-756 is concerned, it determines how to practice and not who may practice.

As to 11-775, one needs but to compare this section with sections 11-1301 and 1304 to discover that 11-775 is patterned after and compounded from part of 1301 and 1304, the language in the main, being identical. When we examine 11-1301 we find that Congress confers upon the District Court the power and duty of examination, qualification, and admission to practice as well as the power to censure, suspend and expel and includes the form of the oath to be taken. In 11-775 we find no corresponding provision respecting admission to practice or an oath with respect to the Municipal Court and the Municipal Court of Appeals or anything akin thereto.

It is therefore unavoidable to conclude that, since Congress had recourse to the Act of March 3, 1901, as amended April 19, 1920, shown as 11-1301, 1302, 1304, 1951 D. C. Code, in selecting the language and powers granted to the Municipal Court and the Municipal Court of Appeals in the Act of April 1, 1942, namely 11-775 of the 1951 D. C. Code, the omission in 11-775 of any reference as to admission to practice and the absence of any prescribed oath, as is contained in 11-1301, demonstrates, beyond peradventure of a doubt, that Congress deliberately, intentionally and definitely excluded the Municipal Court and the Municipal Court of Appeals from control or discretion over the admission to practice, thus establishing beyond misunderstanding or dispute, the perfection of this Court's decision in Mullen v Canfield, supra, and since Congress expressly denied the power respecting admission or rejection to the Municipal

Court and the Municipal Court of Appeals, there exists no abstract theory or basis upon which the Municipal Court can claim to possess the powers by any inference whatever, no matter what the general rule may be, nor as argued Page 12 from 7 C.J.S. Sec. 18 (b) the text being taken from In re Wilson, et al, 100 Pac. 75, 76 in their footnote 14, for it will be seen from the footnote that no authority is shown to hold that a court empowered to disbar necessarily possesses the right to admit.

Indeed, if one were to hold strictly to the proposition Appellees advance, it could be syllogistically concluded, that counsel are, in effect, arguing that, notwithstanding the specific authority conferred in the act (11-755 of the 1951 Code) granting the Municipal Court the right to disbar, inasmuch as no power to admit is also granted, the Municipal Court lacks the power to disbar. This is, assuredly, an incongruous rationale. The law is well stated in the State ex rel Jones v Laughlin, 73 Mo. 443, 447, 448, cited with approval by this Court in Mullen v Canfield, supra, and hence the law of this jurisdiction.

In that case, as here, it was argued that

> "every court of record, has, without Statutory provision power to control its officers. This power is inherent and is necessary for the protection of the Courts. In its exercise it may strike from the roll of attorneys any name it has allowed to be placed there. *** The court is only an inferior court, in that its jurisdiction is limited to a certain class of cases pointed out by law. Like United States Courts, as to all matters over which it has power, its jurisdiction is general. These courts have power to strike without the aid of statute".

Despite the above argument, which parallels that of Appellees here, the Court, inter alia, held, pages 447, 448,

> "This court, being the mere creation of the legislature, owing its origin as well as its jurisdiction and powers to the legislative will, it was clearly competent for the legislature to enlarge or restrict those powers, or to abolish the court altogether.*** The rule in regards to these courts of inferior and limited jurisdiction is well established, that they take nothing by IMPLICATION, and can only exercise such powers as the legislature has EXPRESSLY CONFERRED." (emphasis supplied)

So definite and so unassailable is the logic of the above decision, that it admits no doubt or equivocation. The Municipal Court is a creation of Congress, it is a court of inferior and limited jurisdiction, it can take nothing by implication and can only exercise such powers as Congress has expressly conferred.

This extinguishes the claim of inherent power and as has been shown, there exists no express authority. To the contrary, Congress has specifically denied it. If Congress had intended it where is the oath which they have provided for every other court they empower to admit? Congress has conferred the power to censure, suspend and expel upon definite conditions none of which exist here or are contemplated in Rule 75, that rule having no relation to 11-775. It did not confer the power to admit to practice or to qualify attorneys for admission to

practice. Hence the contention of APPELLEES that the right to admit exists and that Rule 75 is valid, must fail. Indisputably, the right to admit does not exist.

If anything more is needed to show the cogency and propriety of this Court's decision in the Mullen case we invite attention to the index of 31 Stat. at L. page 2019, which says "Attorneys admission to bar District of Columbia" referring to page 1224, Sec. 218, etc. and to the index of 41 Stat. at L. page IXVIII (amending 31 Stat. L) which says "District of Columbia, Sec. 218, Admission of Attorneys" referring to page 561. It will be observed that these indices do not say "Admission to its bar or to the Supreme Court of the District of Columbia. Inasmuch as the index as well as the body of the Statutes at Large are authored, prepared by and passed by Congress, the purpose and intention of Congress are clear and unmistakable, even under the rule of strict statutory construction.

Summarizing, we have in sections 11-1301 and 1304, 1301 containing the right to admit and the right to censure, suspend or expel, then in 1304 the steps necessary to censure, suspend or expel directed to the District Court, and as to admission exclusive in that Court. We have the indices of 31 Stat. L. and of 41 Stat. L. and have the decision in Mullen v Canfield, supra, construing that the District Court alone, in this jurisdiction possesses the power to admit, etc. and that when an applicant is admitted by the District Court, he becomes entitled to practice in the inferior courts of the District. We then observe that the Municipal Court is set up as an inferior court. We proceed then to the Act of April 1, 1942, merging the Police and Municipal Courts into the Municipal Court and vesting in the Municipal Court and the Municipal Court of Appeals the power to censure, suspend and expel, 11-775, the language taken from 11-1301, and the proceedings necessary to censure suspend and expel taken from 11-1304. We also see that the portion of 11-1301 according the powers of admission, etc. to practice to the District Court, omitted entirely as to the subject of Attorneys in 11-775, also included in 11-1301 is the specific oath to be required of admittee by the District Court and the absence of any oath in 11-775 as to the Municipal Court and the Municipal Court of Appeals. We also note the language of Rule 4 of the Municipal Court of Appeals, and for that matter that of the Municipal Court Rule 62 up to the adoption of Rule 75, in 1952. We conclude with this Court's decision in Brooks v Laws, 1952 reaffirming that only the District Court is empowered to qualify and admit attorneys to the practice of the law in this jurisdiction. These considerations unerringly establish the fact that the District Court and the District Court alone may admit an applicant to the practice of law in this jurisdiction. They as unerringly demonstrate this Court's construction in the Mullen case, in every aspect, serves the

present situation and remains as imperative authority respecting the existing law of this jurisdiction, and just as unerringly it establishes the invalidity of Municipal Court Rule 75.

AS TO REASONABILITY OF THE RULE

There is no such thing as a reasonable rule outside the law.

An examination of the District Court Rule 94 shows that it provides for reference to it of any violation of ethical conduct throughout the jurisdiction. It's concern is therefore manifest that it would readily lend its offices to any course calculated to maintain the proprieties throughout the jurisdiction.

The bulk of attorneys are admitted twice a year as a result of examinations. The rest trickle in. At present, as suggested in Appellees' Brief page 12, the Naturalization Clerk of the District Court,who is also in charge of the Roll of Attorneys, is beset by calls from the branches of the Municipal Court to verify the fact of Admission to Practice. It is a matter of common knowledge that the Clerks of the Municipal Court are overworked and underpaid and that the Municipal Court is understaffed and that Rule 75 has brought about an increase in the work load.

The District Court possesses very adequate and modern equipment for the multiple reproduction of written or printed material. Inquiry will reveal that a request, by the Municipal Court or Judges thereof, directed to the Judges of the District Court, would be honored with copies of the roll of attorneys admitted to practice even as and when they are admitted or that the same data could, upon application and request, be obtained from the Committee on Admissions and Grievances. Indeed, the same data is available to all the courts of the jurisdiction or any other agency to whom such information is of value. This service would include the notice of suspension or expulsion, as well. This is a truly reasonable and obvious method, and through it, at one and the same time, the data supplied would establish the proper practitioners and the unlicensed persons, so that the time of the Municipal Court Clerks as well as the District Court Naturalization Clerk need not be taken.

The course taken through Rule 75 is thus shown to be not only without the law, but so indirect and circuitous, so wrong in principle in the fact that the burden, expense, inconvenience and odium of improper practice is cast upon the wholly innocent shoulders of the honorable members of the bar through the illicit conduct of others, that it stamps Rule 75 unreasonable under any criteria and by contrast with the suggested method, inexcusable.

In conclusion, permit us to say, it is clear that the law here, both statutory and judicial, is completely lacking in ambiguity or uncertainty. Yet, despite the unmistakable language of the Court in Mullen v Canfield, supra and the unalloyed logic employed by the Court in that case, and the reiteration by this Court in Brooks v Laws, supra, that only the District Court possesses the power to admit and qualify, we have the Appellees, construing the specific powers accorded to the Municipal Court to punish for cause and requiring charges under oath, personal service and the right to be heard as a prerequisite to such punishment, extending those statutory powers out of all proportions from their clear cut and specific limitations and drawing from such powers the right to admit to practice without a single word directed to such a purpose.

One of the most admirable things about our system of law is the willingness of our courts to permit free expression on questions of law and on occasion reverse their position. This is the inevitable practice of the intellectually honest person, whose interest is to be correct and in courts assures us of the most just dispositions.

This right to disagree exists as to all parties or their legal representatives.

We do not, however, concede the right of the courts or the judges thereof to oppose superior imperative authority in the slightest respect. Once the proper appellate court has unmistakably construed the law upon any point, the inferior court is without capabilities to disobey or disagree with the construction, nor can counsel, speaking for the court, disagree in the name of the court.

How, we respectfully suggest, can counsel, in the face of the Mullen and Brooks cases argue that the words "in its bar" do not purport to govern the right to practice before all the inferior courts in the District and consistently with such technical reasoning find in Sec. 11-756 and 11-775 (in which not one word is directed to admission to practice) so much justification and merit as to claim the power of admission for the Municipal Court?

Considering the statutory history of the matter of Attorneys and their acquisition to the right to practice law in the District of Columbia, the plain and undeniable fact that Congress conferred that power and duty exclusively upon the United States District Court for the District of Columbia and just as plainly and undeniably denied it to the Municipal Court and the Municipal Court of Appeals for the District of Columbia and, considering further, the equally plain and undeniable construction, to the identical effect, by this Court, as well as its own Court of Appeals, we find it difficult to understand how counsel can maintain that the law does not purport to give the District Court the power

to govern the right to practice before all the inferior courts of the District, and at one and the same time maintain that the right to punish for crime involving moral turpitude, professional misconduct or conduct prejudicial to the administration of justice, accorded by statute, includes the right to admit to practice, a subject not mentioned in the statute.

In the first instance counsel resort to the most technical of constructions and in the second resort to the most fanciful of inferences. This sliding scale of measurement for the evaluation of the respective situations may be convenient but is certainly not in keeping with juridical practice or principles, nor adjuvant of accurate evaluation and determination.

Courts, being entrusted, virtually above any governmental agency, with the most portentous of powers and freighted with the heaviest responsibilities of conscience and honor, charged with the administration of justice, whose very essence requires the strain of every fiber of the judges moral and intellectual being, should, above all, be immaculate from transcending the law.

Indeed, they should be, even above Ceasar's wife.

We respectfully suggest that the record in this case indicates that District Court erred in dismissing the complaint, and, further, that it also establishes (1) that Municipal Court Rule 75 is invalid and (2) that the debarment of Appellant was without authority of law and finally, that the Appellees, Municipal Court and the Judges thereof, should be permanently enjoined from enforcing Rule 75.

Wherefore Appellant prays that this Court render such relief as the nature of the case may require and to the Court may seem meet and proper.

Respectfully submitted,

Phillip W. Austin, P. P.

Henry J. Balzer, of Counsel